

Chapter 4

Event Based Reporting for Certain Nonprofits Making Occasional Independent Expenditures to Support or Oppose Ballot Measures

FPPC Regulation 18413 provides an event based reporting alternative for certain 501(c)(3) and 501(c)(4) organizations (which qualify as recipient committees, as described in Chapter 1) to disclose occasional **independent expenditures** made in connection with state or local ballot measures.

The event based reporting alternative may **not** be used to disclose:

- Contributions to candidates or committees, including contributions to ballot measure committees
- Independent expenditures to support or oppose candidates

Who May Use the Event Based Reporting Alternative?

An organization may use event based reporting only if the organization meets both of the following criteria:

- The organization has obtained 501(c)(3) or 501(c)(4) tax exempt status from the IRS and if incorporated in California, obtained a tax exempt determination from the California Franchise Tax Board under California Revenue and Taxation Code Section 23701(d) or 23701(f). If the organization is incorporated in a state other than California, it must have obtained the required tax exempt

determination under the laws of the state of incorporation.

- The organization is multipurpose (i.e., it receives donations, membership dues, or other payments for purposes other than making political expenditures in California) and only occasionally makes independent expenditures using donated funds from its general treasury to support or oppose ballot measures in California. “Occasionally makes independent expenditures” means expenditures from the organization’s general treasury totaling, in the aggregate, in a calendar year:
 - Less than \$500,000 to support or oppose four or fewer state ballot measures; or
 - Less than \$50,000 to support or oppose one or more local ballot measures.

What Are the Advantages of Event Based Reporting?

Generally, the Political Reform Act requires an organization that pays for independent expenditures out of funds received from others to register and file reports as a recipient committee. A multipurpose organization may qualify as a recipient committee when it uses donations, membership dues, or other payments for

making contributions and expenditures to support or oppose state or local candidates or ballot measures. **Carefully review the Multipurpose Organization discussion in Chapter 1 to see if your organization will qualify as a recipient committee.**

Once an eligible 501(c)(3) or 501(c)(4) organization has qualified as a recipient committee, it may choose the event based reporting alternative to disclose occasional independent expenditures to support or oppose state or local ballot measures. An organization that qualifies to use event based reporting is not required to file a Statement of Organization (Form 410) to register or terminate as a recipient committee and is not required to file regular recipient committee semi-annual or preelection campaign statements (Form 460), or the Supplemental Independent Expenditure Report (Form 465) for activities disclosed in event based reports. Instead, the organization may choose to report its independent expenditures and the donors of funds used to make the independent expenditures on the Independent Expenditure Report (Form 496).

Prior to qualifying for event based reporting, an organization may have filing obligations as another type of committee, as described in the following examples:

Example *Consumers for Justice, a 501(c)(3) organization, made its first contribution in the amount of \$10,000 to a California state ballot measure committee. The organization had not made a previous contribution to a California candidate or committee. The organization qualified as a major donor committee and must disclose the contribution on the Major Donor and Independent Expenditure Committee Campaign Statement (Form 461). (See FPPC Campaign Disclosure Manual 5.)*

Example *Charity for Children is a 501(c)(3) organization that opposes a ballot measure on the November ballot. On*

June 1, the charity made its first political expenditure in California, a payment of \$20,000 for a mass mailing that urged voters to vote no on the measure. The mailing was produced by the organization independently of any other campaign committee. Charity for Children qualified as an independent expenditure committee. Charity must file a Major Donor and Independent Expenditure Committee Campaign Statement (Form 461) and a Supplemental Independent Expenditure Report (Form 465). (See Chapters 1 and 3.)

Each organization may qualify as a recipient committee if it makes future contributions or independent expenditures totaling \$1,000 or more and may utilize event based reporting for independent expenditures on ballot measures as long as the organization meets the requirements described on page 4-1.

However, some 501(c)(3) or 501(c)(4) organizations may qualify as recipient committees and not be eligible for event based reporting, as described in the following example:

Example *Citizens for Public Libraries is a 501(c)(3) organization that provides educational services to the community. It has not made political expenditures in the past. This year, the organization sent a mailer to its members requesting contributions for the purpose of supporting Measure A, a library bond measure. Citizens will qualify as a recipient committee primarily formed to support a ballot measure once contributions totaling \$1,000 or more are received. As such, it is not considered to be making independent expenditures, and all funds received and spent to support the measure are reportable. Once \$1,000 is received, Citizens must file a Statement of Organization (Form 410) and begin filing reports as a primarily formed ballot measure committee. (See FPPC Campaign Disclosure Manual 3.)*

Some 501(c)(3) or 501(c)(4) organizations that are registered as recipient committees (for example, they have made contributions to other committees) may use event based reporting to disclose occasional independent expenditures made to support or oppose ballot measures, or they may disclose the independent expenditures on their recipient committee reports.

The above examples are only a guide because the manner in which funds are raised and spent may be different for each organization. Contact the FPPC for specific guidance to determine whether your organization will qualify for event based reporting.

What Is an Independent Expenditure That Would Qualify for Event Based Reporting?

An “independent expenditure” is a payment for a communication (a billboard, radio ad, mailing) that expressly advocates the qualification, passage, or defeat of a clearly identified ballot measure, **and** the communication is not made at the behest of a committee formed to support or oppose the ballot measure.

See Chapter 1 for more information regarding when a communication may qualify as a contribution or independent expenditure.

Notices on Political Mailings and Broadcasts—Donors of \$50,000 or More

In addition to the identification requirements discussed in Chapter 2, if the organization is making an independent expenditure in connection with a single or multiple measures listed on the same ballot *and* the organization reports on a Form 496 a donor of \$50,000 or more, the donor’s name may be required to be identified on the advertisement. The communication must include words like “major funding by” and list the most recent top two donors of \$50,000 or

more. See FPPC Regulations 18450.4 and 18450.5 for specific identification rules.

Event Based Reporting

An organization electing to report under the event based reporting method must report an independent expenditure of \$1,000 or more on the 496 Independent Expenditure Report (Form 496). No other form or report is required.

The organization must file electronically with the Secretary of State. If an independent expenditure is made to support or oppose a local measure, a copy must also be filed with the city or county filing officer receiving original statements for the primarily formed ballot measure committees.

The Form 496 must be filed within 10 business days after making an independent expenditure of \$1,000 or more. If the independent expenditure is made during the 90 days preceding a state election or 16 days preceding a local election in which the measure appears on the ballot, the Form 496 is due within 24 hours after making the independent expenditure.

For purposes of filing Form 496, the date an independent expenditure is made is the date the communication is mailed, broadcast, or otherwise disseminated to the public. A payment for a communication that is never disseminated to the public is not an independent expenditure and need not be reported on Form 496.

The organization must maintain records necessary to document the donor contributions and the independent expenditures reported.

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Form 496

496 Independent Expenditure Report				Type or print in ink. Amounts may be rounded to whole dollars.		496 INDEPENDENT EXPENDITURE REPORT	
NAME OF FILER California Foundation for Endangered Animals Eligible 501(c)3 IE Report				Date of This Filing 5/10/XX	Date Stamp	CALIFORNIA FORM 496 For Official Use Only	
AREA CODE/PHONE NUMBER 916.444.1111		I.D. NUMBER (if applicable)		Report No. 1			
STREET ADDRESS 500 A Street (Brad Conner - Officer)				<input type="checkbox"/> Amendment to Report No. (explain below)			
CITY Sacramento		STATE CA	ZIP CODE 95814	No. of Pages 2			
1. List Only One Candidate or Ballot Measure							
NAME OF CANDIDATE SUPPORTED OR OPPOSED				NAME OF BALLOT MEASURE SUPPORTED OR OPPOSED			
OFFICE SOUGHT OR HELD				BALLLOT NO./LETTER			
DISTRICT NO.				JURISDICTION			
SUPPORT				SUPPORT			
OPPOSE				OPPOSE			
2. Independent Expenditures Made Attach additional information on appropriately labeled continuation sheets.							
DATE		DESCRIPTION OF EXPENDITURE				AMOUNT	
5/9/XX		radio advertisements				\$30,000	
496 Independent Expenditure Report							
NAME OF FILER California Foundation for Endangered Animals Eligible 501(c)3 IE Report						CALIFORNIA FORM 496 I.D. NUMBER (if applicable)	
3. Contributions of \$100 or More Received *							
DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)		CONTRIBUTOR CODE**	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED	INTEREST RATES	
6/3/XX	Mary Ann Morris 123 Harbor Blvd. Portola, CA 96122		<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SOC	Veterinarian Plumas County Animal Shelter	\$5,000	If loan, enter interest rate, if any _____%	
6/4/XX	Chris Haines 28 Palm Drive Bonita, CA 91902		<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SOC	Doctor Kaiser	\$5,000	If loan, enter interest rate, if any _____%	

How to Complete Form 496

Filer Information

Enter the organization's full name, street address, city, state, and zip code. In addition, include the designation "Eligible 501(c)(3) IE Report" or "Eligible 501(c)(4) IE Report" in the "Name of Filer" field. The report must also include the name of a current officer, director, or trustee of the organization listed on the organization's IRS Form 990, who will be responsible for the accuracy and completeness of the report.

Date of This Filing

Indicate the date of filing the report.

Report Number

Assign a unique number to each independent expenditure report, such as 1, 2, 3, PR-1, PR-2, PR-3, etc.

Name of Ballot Measure Supported or Opposed

Part 1. Disclose the name of the ballot measure, the number or letter, and jurisdiction of the ballot measure supported or opposed. Check the box indicating whether the ballot measure was supported or opposed by the independent expenditure.

Independent Expenditures Made

Part 2. Disclose the date, a description of the independent expenditure (e.g., radio advertisement, billboard, mailing) and the amount.

Contributions Received

Part 3. Disclose each individual or entity that made a donation to the organization's general treasury if \$100 or more of the donor's payment was used to pay for the independent expenditure.

- If a donor knew his or her payment to the organization would be used for an independent expenditure, the entire amount of the donor's payment must be disclosed.
- If only a part of a donor's payment was used, the organization may use any reasonable method that accurately reflects the sources of funds for the expenditure, such as apportioning the donor's payments, or using the last in, first out, accounting method. Once the organization selects an accounting method, it must continue to use the same method and a detailed record must be kept.

Disclose the name and street address of the donor and if the donor is an individual, his or her occupation and the name of his or her employer. If the donor is self-employed, disclose the name of the business. Also disclose the date and amount of the payment. Enter the interest rate for loans.

Donor payments to the organization that must be itemized include only those donations received after the organization made its first expenditures or contributions totaling \$1,000 or more in a calendar year (i.e., it established a history of making expenditures or contributions in California). Prior to that time, donors are presumed not to know that their payments would be used for independent expenditures or contributions in California. If in fact the donors had no knowledge, the organization is not required to disclose information about those donors. Once a history is established, subsequent independent expenditures require donor disclosure.

Example *A 501(c)(3) organization has never made a contribution or independent expenditure in connection with a California candidate, committee, or ballot measure. The organization opposes a ballot*

measure on the November ballot. On June 1, using funds in its general treasury, the organization made its first expenditure of \$5,000, a contribution to the committee primarily formed to oppose the measure. In September, the organization makes its second political expenditure, a \$20,000 independent expenditure. The Form 496 must be filed within 10 days and disclose the independent expenditure and the donors of \$100 or more that contributed to the general treasury since June 2nd whose funds were used to pay for the \$20,000 independent expenditure. Itemize each donor to the organization if \$100 or more of the donor's payment was used to pay for the independent expenditure.

Amendments

To amend a previously filed 496 Independent Expenditure Report, file a new Form 496 with the corrected information, a new Report Number, and the "Amendment" box checked. The Report Number assigned to the original report being amended should be entered on the "Amendment to Report No." line. There is no deadline for filing amendments. However, amendments should be filed as soon as practicable. File the amendment with the Secretary of State and the local filing official if applicable.

Answering Your Questions

- Q. *A non-profit organization made an independent expenditure of \$400,000 in connection with a state measure and \$10,000 in connection with a local measure. Must the expenditures be aggregated for purposes of determining if the organization can use the event based reporting procedure?*
- A. No, the regulation does not require aggregation of the amounts to state and local measures.

- Q. *A nonprofit organization has made contributions and independent expenditures in prior years and is registered as a California recipient committee. May the organization use the event based reporting option to disclose independent expenditures it makes to support or oppose ballot measures?*
- A. Yes, as long as the organization's activity meets the requirements for event based reporting. That is, the organization makes only occasional independent expenditures to support or oppose ballot measures as described in this chapter and it makes those expenditures from funds donated to its general treasury. Independent expenditures to support or oppose candidates and all contributions to candidates and committees must still be disclosed on the organization's recipient committee statements (Form 460). The organization may choose to disclose its ballot measure expenditures on those reports as well, instead of using the event based reporting option.
- Q. *A qualified non-profit organization has been approached by a slate mailer organization (SMO) for \$200,000 to list a state measure on a slate mailer. The SMO states the payment will be an independent expenditure. Can the organization use the event based reporting procedure?*
- A. Yes, as long as the payment to the SMO is for an independent expenditure. The organization may not use event based reporting if the payment was made at the behest of the ballot measure committee. (The organization may only use event based reporting if it had made a political expenditure in the current or prior four years of \$1,000 or more.)
- Q. *A qualified non-profit organization on November 1 made a \$15,000 contribution from its general treasury to a committee primarily formed for a state measure listed on the June ballot of the following year. This was the first contribution the organization had made in California. In February, the organization made an independent expenditure of \$200,000 in connection with the same state measure. What are the reporting obligations?*
- A. On or before January 31st, the organization must file a campaign report, Form 461, as a state major donor. In February, the organization qualifies for the event based reporting procedure and must file Form 496, within 10 days. The organization must identify the donors since November 2nd whose donations paid for the \$200,000 independent expenditure. Each donor who contributed \$100 or more must be identified on the Form 496. Records must be maintained that verify the accounting method used. If a donor made a payment to the general treasury for the purpose of making the independent expenditure, disclose the full amount of the donor's payment.
- Q. *An organization received a federal grant on the condition that funds could not be used for political purposes. The organization had chosen the accounting method, last in, first out, to determine which donor payments were used for an independent expenditure. If the grant was the most recent receipt to the general treasury, must the federal government be listed as a donor?*
- A. No, as long as the organization has a written contract. Organizations should contact the FPPC for guidance because an exception to the accounting method to apportion payments must be determined on a case by case basis.
- Q. *A non-profit organization is incorporated as a Section 501(c)(4) corporation with the IRS. The organization was*

incorporated in January and plans to make independent expenditures in the next 60 days. Is there a time period before a new organization making independent expenditures may use the event based reporting procedure?

- A. Regulation 18413 states the organization must be a multipurpose organization. Although the regulation does not define multipurpose, the organization should contact the FPPC for written advice before using the event based procedure. An organization that just recently received non-profit status and has not established a track record of spending that would establish it as a multipurpose organization should not assume it will qualify for event based reporting.

Authority

The following Government Code sections and Title 2 regulations provide authority for the information in this chapter:

Government Code Sections

- 82013 *Committee.*
82031 *Independent Expenditure.*

Title 2 Regulations

- 18413 *Reporting Independent Expenditures by Eligible 501(c)(3)/501(c)(4) Organizations.*
18450.4 *Contents of Disclosure Statements. Advertisement Disclosure.*
18450.5 *Amended Advertising Disclosure.*